



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

August 7, 2001

Harry Kresky, Esquire
250 West 57th Street, Suite 2015
New York, NY 10107

RE: MUR 5102

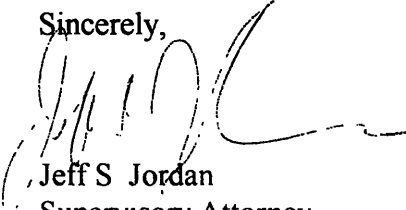
Dear Mr Kresky.

On September 25, 2000, the Federal Election Commission received your complaint filed on behalf of your client, Jeff Graham, alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondents. See attached narrative. Accordingly, the Commission closed its file in this matter on July 31, 2001. This matter will become part of the public record within 30 days.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,


Jeff S. Jordan
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

MUR 5102
BUFFALO NEWS

Harry Kreskey, counsel on behalf of Jeff Graham, a New York Independence Party candidate for the Senate, alleges that Mr. Graham was excluded from the September 13, 2000, debate, which was "staged" by the Buffalo News, NBC Television, CBS Television and the local PBS affiliate. Mr. Kreskey asserts that there were no pre-established objective criteria used to determine who would participate in the debate.

In response to the complaint, the Buffalo News states that NBC's Washington Bureau managed the debate and the criteria it used to determine which candidates would be invited to the debate included, "a candidate would have to poll 15% in a basket poll consisting of those surveyed in a Marist, Quinnipiac and/or any statewide poll commissioned by a major news organization."

No response was received from NBC.

CBS states that the debate was broadcast and sponsored by WCBS-TV, which CBS owns and operates. CBS contends that WCBS-TV used "well-established journalistic criteria" in determining who would participate in the debate. Alternatively, CBS contends that the Commission regulations governing debates are unconstitutional, "to the extent applied to press sponsorship of candidate debates."

The local PBS affiliate, Western New York Public Broadcasting Association (WNED-TV), responded that it was not a staging organization and had no role in the debate. Instead, the sponsors of the debate, MSNBC and *Buffalo News*, rented Western New York Public Broadcasting Association's studio facilities.

This matter is less significant relative to other matters pending before the Commission.

21-04-405-1684